

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Amy M. Manetta
Application No.: 09/805,970
Filed: March 14, 2001
Title: System and Method for Processing Ventilator Information
Examiner: Truc T. Chuong
Art Unit: 2179

Pre-Appeal Brief Review Request

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action dated April 19, 2006 for which a shortened statutory period of three months ending July 19, 2006 was set in which to respond, the attached Notice of Appeal and Pre-Appeal Brief Review Request is submitted and reconsideration of the rejections is respectfully requested. Applicants submit that this response is timely.

Applicant respectfully submits that no amendments are being filed with this Request. This Request is being filed concurrently with a Notice of Appeal. The Review is requested for the following reasons set forth below.

Rejection of Claims 1 and 12 under 35 USC 102(e)

Claims 1 and 12 are rejected under 102(e) as being anticipated by Ruess et al. (U.S. Patent No. 6,406,426).

The present invention as claimed in claims 1 and 12 recites an internet compatible system and method for displaying medical information derived from a plurality of sources. The system includes a communication network for acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command. The system further includes a device for prioritizing received ventilator parameters and settings for display in a desired order and for

allocating an attribute to distinguish changed ventilator parameters and settings. A display generator initiates generation of data representing a display of the prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings. A full listing of the claims as they currently stand can be found in the response to Non-Compliant Amendment filed on January 19, 2006. The arguments presented below are applicable to claims 1 and 12.

In order for the present claimed invention to be considered anticipated by a piece of prior art, the following conditions must be met. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicant respectfully submits that Ruess neither discloses nor suggests each element of the claimed invention and thus, does not meet the above conditions as required by MPEP §2131. As discussed in the remarks of the Response filed on December 23, 2005, Ruess does not anticipate the present claimed invention.

Ruess does not teach a system comprising "a communication network for acquiring ventilator **parameters and settings** associated with a patient on a substantially periodic basis and in response to a user command" as in the present claimed invention. Column 3, lines 46-60 and Column 7, lines 27-43 of Ruess as cited by the Examiner merely shows that the "therapy status data" can be communicated to the patient monitor. Ruess defines "therapy status data" as "ongoing therapy parameters" that are able to be monitored by the patient monitor (see col. 7, lines 27-28). Contrary to Ruess, the present application clearly sets forth on page 1, lines 21 – 25 that "settings" are data values that

are required to “control [the operation of] a ventilator”. Therefore, the “therapy status data” in Ruess cannot be “expressly or inherently” equated with “parameters and **settings**” of a ventilator as in the present claimed invention. Thus, Ruess neither discloses nor suggests each and every limitation of the claimed invention.

The Examiner further cites column 8, lines 13 – 29 in support of his assertion of anticipation. Applicant respectfully disagrees. Applicant respectfully submits that the claimed limitation is neither disclosed nor suggested in the cited section (or elsewhere) of Ruess. Rather, the section of Ruess cited by the Examiner describes **selecting** patient monitoring conditions and therapy delivery parameters. The function of “selecting” is wholly unlike and unrelated to the function of “acquiring” as performed by the present claimed system. Additionally, the data being “acquired” in the present claimed invention (“parameters and settings”) is not equivalent to the data being “selected” by Ruess. Ruess provides no enabling disclosure as required by 35 USC 112 that allows one skilled in the art to “expressly or inherently” conclude that the Ruess system includes “a communication network for **acquiring ventilator parameters and settings** associated with a patient on a substantially periodic basis and in response to a user command” as in the present claimed invention.

Allowing for the acquisition of parameters and settings as claimed in the present claimed invention enables both periodic monitoring of a patient to create a time line of data as well as immediate acquisition of data upon receipt of a user command. This enables a medical professional to review a history of the patient as well as obtain immediate parameter readings and ventilator device settings used in operating the ventilator in providing treatment to a patient, for example. Ruess provides a warning system and is not concerned with efficient and “prioritized” display of “ventilator parameters and settings” as in the present claimed invention.

Applicant respectfully submits that the feature cited by the Examiner fundamentally misunderstands and misinterprets Ruess. Ruess neither discloses nor suggests “a device for prioritizing received ventilator parameters **and settings** for display

in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention. Rather, Reuss in Column 15, lines 4-8 cited by the Examiner describes a clean-up process performed by a Message Server Task 98. The Message Server Task is not a “device for prioritizing received ventilator parameters and settings” as in the present claimed invention. Rather, the functions able to be performed by the Message Server task are described beginning on line 48 of column 14 and ending on line 15 of column 15. There is no 35 USC 112 compliant enabling disclosure of the present claimed feature of “prioritizing”. Rather Reuss discloses a “maintenance activity” whereby messages are selected to be removed from memory “based upon age of the message, whether it has been read, and the priority of a medical alert (if any) associated with it.” Thus, the deletion of messages when a memory is full is wholly unlike the “device for prioritizing” as in the present claimed invention. The messages being deleted by Reuss is NOT “expressly or inherently” equivalent to “prioritizing received ventilator parameters and settings” as in the present claimed invention. Prioritizing the display of the ventilator parameters and settings as claimed in the present invention advantageously provides users with an easy and recognizable display for analyzing the received parameters and settings.

Reuss is also silent with respect to the feature of “allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention. There is no 35 USC 112 compliant enabling disclosure of the claimed feature and therefore, Reuss does not include each and every element of the claimed invention as required under MPEP 2131.

Furthermore, as discussed above, Reuss is not concerned with providing a user-friendly and efficient way to process and display ventilator settings and parameters. Therefore, Reuss neither discloses nor suggests “a display generator for initiating generation of data representing a display of **prioritized ventilator parameters and settings** in the desired order and **attributes for distinguishing the changed ventilator parameters and settings**” as in the present claimed invention. While Reuss in Column 3, lines 46-60, Column 7, lines 27-43 and Column 15, lines 4-8 as cited by the Examiner

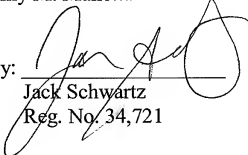
describes displaying therapy status data at a patient monitor, a description of therapy status data and message server task maintenance respectively, none of the cited passages include any 35 USC 112 compliant enabling disclosure of the present claimed feature.

Having fully addressed the Examiner's rejections, it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the applicant's attorney at the phone number below, so that a mutually convenient date and time for a telephonic interview may be scheduled.

The fee of five hundred dollars (\$500.00) due for the Notice of Appeal is paid concurrently with the filing of the Notice and the Request for Review. No additional fee is believed due. However, if a fee is due, please charge the additional fee to Deposit Account 50-2828.

Respectfully submitted,
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By:



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